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ADS Chapter 158

Document Retention and Collection Orders

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ADS 158 – Document Retention and Collection Orders
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This chapter has been modified in its entirety.

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ADS 158 – Document Retention and Collection Orders

158.1 OVERVIEW

Effective Date: 04/07/2011

This chapter establishes internal procedures for the issuance and implementation of document retention and collection orders of USAID materials. Nothing in this chapter is intended to create any substantive or procedural rights, privileges, or benefits in any administrative, civil, or criminal matter by any person or party.

Document retention orders require that certain hard copy and/or electronic materials be preserved due to litigation, audit, investigative, or other needs. Document collection orders require that such materials be collected and provided to the Office of the General Counsel (GC).

This chapter does not apply to the document retention and collection process managed by the Office of Civil Rights and Diversity (OCR&D) with respect to Equal Employment Opportunity claims, as set forth in [ADS Chapter 110, Equal Employment Opportunity](#).

158.2 PRIMARY RESPONSIBILITIES

Effective Date: 04/07/2011

a. The **Assistant General Counsel for Litigation and Enforcement (GC/LE)** and the **Assistant General Counsel for Ethics and Administration (GC/EA)** are responsible for issuing and overseeing the implementation of document retention and collection orders.

b. The **Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD)** and the **Bureau for Management, Office of the Chief Information Officer, Chief Information Security Officer (M/CIO/CISO)** are responsible for facilitating the implementation of such orders, which may involve suspending document disposition procedures, preserving hard copy and electronic materials, and collecting and providing such materials to GC.

c. **Bureaus/Independent Offices (B/IOs), Missions, and USAID Staff** are responsible for preserving materials and providing them to GC pursuant to any document retention and/or collection orders issued.

158.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

158.3.1 Issuance and Contents of Document Retention and Collection Orders

Effective Date: 04/07/2011

GC is solely authorized to issue document retention and collection orders and may do so when it is in the best interest of the Agency. Examples of situations which might necessitate but do not necessarily require such an order include litigation or anticipated

litigation, administrative proceedings, subpoenas, congressional actions, and audits and investigations.

To issue a document retention and/or collection order, GC will send written notice to M/MS/IRD and M/CIO/CISO and to relevant B/IOs, Missions, and USAID staff. The order should provide a brief summary of the circumstances necessitating it and a description of the materials subject to retention and/or collection. The order should indicate:

- a. The types of materials that must be preserved or collected, which may include record, non-record, and other materials, such as hard copy and electronic memoranda, reports, correspondence, notes, worksheets, drafts, spreadsheets, calendars, books, images, voicemail messages, video recordings, and the like;
- b. Applicable date restrictions limiting the scope of materials subject to preservation or collection based on when they were created or received;
- c. Applicable subject matter restrictions, such as materials relating to a particular subject matter or containing particular terms or keywords; and
- d. Applicable custodian restrictions.

Orders should also indicate:

- e. The estimated duration of any preservation requirements and deadlines for when collected materials must be provided to GC;
- f. Whether individuals are required to certify that they have reviewed the order and will comply with its terms; and
- g. Contact information for people within GC who can answer questions concerning the order.

158.3.2 Implementation

Effective Date: 04/07/2011

M/MS/IRD and M/CIO/CISO will work with GC to facilitate the implementation of document retention and collection orders. They will provide information regarding regularly scheduled disposition procedures that could affect materials subject to an order, such as the disposition of materials located at a Federal Records Center (FRC) or the transfer of materials to the National Archives and Records Administration (NARA). They will suspend such procedures if GC determines it is appropriate, seeking an extension of destruction procedures under [36 CFR 1228.54](#), as necessary. They will also analyze and provide information concerning the potential location of electronic materials, which might include hard drives, back-up tapes, and the like, and preserve and collect materials from such locations if appropriate under the circumstances, as determined by GC.

Relevant B/IOs, Missions, and USAID staff will also work with GC, M/MS/IRD, and M/CIO/CISO to preserve and collect materials in their possession pursuant to any document retention and/or collection orders issued. Such orders shall supersede other disposition procedures, including those set forth in [ADS Chapter 502, The USAID Records Management Program](#).

Individuals who have received a document retention and/or collection order may be required to provide written certification to GC that they have reviewed and understood its contents and will comply with its terms.

158.3.3 Modification and Removal

Effective Date: 04/07/2011

GC may modify the terms of retention and collection orders once they have been issued and must remove orders when they are no longer necessary. To modify or remove an order, GC must give written notice to M/MS/IRD, M/CIO/CISO, and relevant B/IOs, Missions, and USAID staff.

158.3.4 Penalties for Non-Compliance

Effective Date: 04/07/2011

USAID may be subject to judicial or other sanctions if it fails to comply with document retention and collection orders. Individual staff members may also face penalties under USAID's [Table of Offenses and Penalties](#) for insubordination as well as civil and criminal legal penalties.

158.4 MANDATORY REFERENCES

158.4.1 External Mandatory References

Effective Date: 04/07/2011

- a. [36 CFR 1228.54](#)
- b. [44 U.S.C. Chapter 3301](#)

158.4.2 Internal Mandatory References

Effective Date: 04/07/2011

- a. [ADS 110, Equal Employment Opportunity](#)
- b. [ADS 502, The USAID Records Management Program](#)

158.5 ADDITIONAL HELP

Effective Date: 04/07/2011

- a. [ADS 487saa, Table of Offenses and Penalties](#)

158.6 DEFINITIONS

Effective Date: 04/07/2011

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

disposition

The transfer, retirement, and/or disposal of records or non-record material. (Chapters 158, [502](#))

non-record

U.S. Government-owned informational materials excluded from legal definition of records; documentation/correspondence that does not document USAID's policies, procedures, practices or operations. Includes extra copies of documents kept only for convenience or reference, stocks of publications of processed documents, and library or museum materials intended solely for reference or exhibition. (Chapters 158, [502](#))

records

According to 44 U.S.C. 3301, "records' includes all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." (Chapters 158, [408](#), [502](#))

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